IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 10544 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DARA PHIROZESHAW MEHTA AND ANOTHER
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR SUNIT S SHAH for Applicants.
MR PRADIP BHATE, APP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 01/02/2006

ORAL JUDGMENT

RULE. Mr.Pradip Bhate, learned APP waives service of notice of rule on behalf of the respondents. With the consent of the parties, matter is taken up for final hearing today.

By filing this application, the applicants have prayed that the proceedings instituted by Food Inspector – respondent No.2, which is registered as Criminal Case No.4509/2002 filed before learned Judicial Magistrate, First Class, Second Court, Ankleshwar, Bharuch and process issued thereon may be quashed. Applicants are accused Nos.9 and 10 in the aforesaid complaint. It is alleged in the complaint that the company has mis-branded the food product and has accordingly committed offence under Section 2 (ix) (k) and (e) read with Section 7 (ii) (v) of the Food Adulteration Act, 1954 and accordingly, they are liable to be convicted under Section 16 of the said Act. It is also alleged in the complaint that a sample of 500 grams of Glucon-D – Orange was taken by Food Inspector and after following necessary procedure the same was sent for analysis to the Public Analyst. After receiving the report of Public Analyst, aforesaid complaint is filed against the company, all its directors as well as against the manager, as it was prima facie found that said product is mis-branded.

Mr.Sunit Shah, learned advocate for the applicants submitted that so far as present applicants are concerned, they are only nominal directors and they were not in any way actively associated with the affairs of the company. It is submitted by Mr.Shah that in fact both the applicants are solicitors and they have nothing to do with the business and affairs of the company. He further submitted that even otherwise in the complaint no allegations are made so far as present applicants are concerned. He also submitted that even prior to filing of complaint a valid nomination was given and, therefore, the complaint against the applicants is not maintainable. To substantiate his say, Mr.Shah, has relied upon the decision of the Apex Court in S.M.S.Pharmaceuticals Ltd.

Vs. Neeta Bhalla and another, reported in 2005 (8) SCC 89.

On the other hand, Mr.Bhate, learned APP submitted that it may be true that the applicants are solicitors and they may not be actively associated with the business of the company but since names of all directors were given by the company, the Food Inspector has joined all the directors in the complaint.

Considering the fact that no specific role is attributable to the applicants and simply because the company has given names of all directors, and since it is pointed out to the Court that the applicants were not at all attending the business of the company at any point of time as they are merely enrolled as directors though they are solicitors by profession, in my view, it would not be just and proper to continue present proceedings against the present applicants. In that view of the matter, it is not necessary to examine whether any nomination was given at the time when the offence was committed. Considering the aforesaid aspect of the matter, this application is allowed. It is, however, clarified that at the time of trial if the Court is of the opinion that any specific role of the applicants is found or if it comes in evidence that any of the applicants have also committed the offence as per the complaint, it will be open for the Magistrate to follow the procedure under Section 319 of Criminal Procedure Code as well as under the provisions of Section 20-A of the Prevention of Food Adulteration Act, 1954 and applicants can be joined as accused and tried before the trial is concluded. Mr.Shah has also submitted that if anything is found against the applicants, he has no objection on applicants being joined as accused in trial at any point of time.

In view of what is stated herein above, this application is allowed. Criminal Case No.4509 of 2002 filed before learned Judicial Magistrate, First Class, Second Court, Ankleshwar, Bharuch and process issued thereon is quashed so far as present applicants are concerned. Rule is made absolute accordingly. It is clarified that this order will have no bearing so far as rest of accused are concerned and this order is passed only in favour of the present applicants, who are accused Nos.9 and 10 in the complaint.

(P.B.MAJMUDAR, J.)

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